

59:3-1

LEGISLATIVE HISTORY CHECKLIST
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(Public liability--extend immunity
to employees of covered agencies)

NJSA: 59:3-1

LAWS OF: 1994 **CHAPTER:** 49

BILL NO: A226

SPONSOR(S): Bryant and Kramer

DATE INTRODUCED: Pre-filed

COMMITTEE: **ASSEMBLY:** Judiciary
SENATE: Judiciary

AMENDED DURING PASSAGE: Yes **Amendments during passage**
First reprint enacted denoted by superscript numbers

DATE OF PASSAGE: **ASSEMBLY:** March 28, 1994
SENATE: May 12, 1994

DATE OF APPROVAL: June 23, 1994

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clipping attached:
"Tourism fees, worker shield among new laws," 6-25-94, Star Ledger.
KBG:pp

[FIRST REPRINT]
ASSEMBLY, No. 226

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION

By Assemblymen BRYANT and KRAMER

1 AN ACT concerning public immunity from liability in certain
2 instances and amending various sections of the New Jersey
3 Statutes.

4

5 BE IT ENACTED *by the Senate and General Assembly of the*
6 *State of New Jersey:*

7 1. N.J.S.59:3-1 is amended to read as follows:

8 59:3-1. Generally

9 a. Except as otherwise provided by this act, a public employee
10 is liable for injury caused by his act or omission to the same
11 extent as a private person.

12 b. The liability of a public employee established by this act is
13 subject to any immunity of a public employee provided by law and
14 is subject to any defenses that would be available to the public
15 employee if he were a private person.

16 c. A public employee is not liable for an injury where ¹[the] a ¹
17 public entity ¹[which employs him]¹ is immune from liability for
18 that injury.

19 (cf: P.L.1972, c.45, s.59:3-1)

20 2. N.J.S.59:8-3 is amended to read as follows:

21 59:8-3. Claims for damages against public entities.

22 No action shall be brought against a public entity or public
23 employee under this act unless the claim upon which it is based
24 shall have been presented in accordance with the procedure set
25 forth in this chapter.

26 (cf: P.L.1972, c.45, s.59:8-3)

27 ¹3. N.J.S. 59:8-6 is amended to read as follows:

28 59:8-6. Claim forms; additional evidence and information;
29 examinations.

30 A public entity may by rule or regulation adopt forms
31 specifying information to be contained in claims filed against it
32 or its employee under this act. Such forms shall include the
33 requirements of 59:8-4 of this act and may include such
34 additional information or evidence as (1) written reports of a
35 claimant's attending physicians or dentists setting forth the
36 nature and extent of injury and treatment, any degree of
37 temporary or permanent disability, the prognosis, period of
38 hospitalization, and any diminished earning capacity; (2) a list of
39 claimant's expert witnesses and any of their reports or
40 statements relating to the claim; (3) itemized bills for medical,
41 dental, and hospital expenses incurred, or itemized receipts of
42 payment for such expenses; (4) documentary evidence showing

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJL committee amendments adopted March 21, 1994.

1 amounts of income lost; (5) if future treatment is necessary, a
2 statement of anticipated expenses for each treatment.

3 In addition, the claimant may be required to submit to a
4 physical or mental examination by a physician employed by the
5 public entity and a claimant may be required to permit a public
6 entity to inspect all appropriate records relating to his claim for
7 liability and damages including, but not limited to, income tax
8 returns, hospital records, medical records and employment
9 records.

10 The Attorney General is hereby authorized to issue rules and
11 regulations on behalf of the State for the purpose of eliciting the
12 types of information referred to in this section and for specifying
13 any additional information which may be reasonably necessary for
14 the administrative disposition of claims under this act.¹

15 (cf: P.L. 1972, c. 45, s. 59:8-6)

16 ¹4. N.J.S. 59:8-8 is amended to read as follows:

17 59:8-8. Time for presentation of claims

18 A claim relating to a cause of action for death or for injury or
19 damage to person or to property shall be presented as provided in
20 this chapter not later than the ninetieth day after accrual of the
21 cause of action. After the expiration of 6 months from the date
22 notice of claim is received, the claimant may file suit in an
23 appropriate court of law. The claimant shall be forever barred
24 from recovering against a public entity or public employee if:

25 a. He failed to file his claim with the public entity within 90
26 days of accrual of his claim except as otherwise provided in
27 section 59:8-9; or

28 b. Two years have elapsed since the accrual of the claim; or

29 c. The claimant or his authorized representative entered into a
30 settlement agreement with respect to the claim.

31 Nothing in this section shall prohibit an infant or incompetent
32 person from commencing an action under this act within the time
33 limitations contained herein, after his coming to or being of full
34 age or sane mind.¹

35 (cf: P.L.1972, c. 45, s. 59:8-8)

36 ¹[3] ⁵¹. N.J.S.59:8-9 is amended to read as follows:

37 59:8-9. Notice of late claim.

38 A claimant who fails to file notice of his claim within 90 days
39 as provided in section 59:8-8 of this act, may, in the discretion of
40 a judge of the superior court, be permitted to file such notice at
41 any time within 1 year after the accrual of his claim provided
42 that the public entity or the public employee has not been
43 substantially prejudiced thereby. Application to the court for
44 permission to file a late notice of claim shall be made upon
45 motion ¹[based upon] supported by¹ affidavits ¹based upon
46 personal knowledge of the affiant¹ showing sufficient reasons
47 ¹constituting extraordinary circumstances¹ for his failure to file
48 notice of claim within the period of time prescribed by section
49 59:8-8 of this act ¹or to file a motion seeking leave to file a late
50 notice of claim within a reasonable time thereafter¹; provided
51 that in no event may any suit against a public entity ¹or a public
52 employee¹ arising under this act be filed later than 2 years from
53 the time of the accrual of the claim.

54 (cf: P.L.1972, c.45, s.59:8-9)

1 ¹[4] 6.¹ N.J.S.59:8-10 is amended to read as follows:

2 59:8-10. Presentation of claim.

3 a. A claim shall be presented to the public entity by delivering
4 it to or mailing it certified mail to the office of the Attorney
5 General or the office of the State agency allegedly involved in
6 the action. A claim may be presented to a local public entity by
7 delivering it or mailing it certified mail to the entity.

8 b. A claim or application shall be deemed to have been
9 presented in compliance with this section even though it is not
10 delivered or mailed as provided in this section if it is actually
11 received at an office of the State or local public entity within the
12 time prescribed for presentation thereof.

13 c. Service of the notice required by this chapter upon the
14 public entity shall constitute constructive service upon any
15 employee of that entity ¹[who is identified in the notice of
16 claim]¹.

17 (cf: P.L.1972, c.45, s.59:8-10)

18 ¹[5.] 7.¹ This act shall take effect immediately.

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23 Extends immunity to public employees in certain instances and
24 imposes 90 day notice requirement for suits against public
25 employees.

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2 it to or mailing it certified mail to the office of the Attorney
3 General or the office of the State agency allegedly involved in
4 the action. A claim may be presented to a local public entity by
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9 received at an office of the State or local public entity within the
10 time prescribed for presentation thereof.

11 c. Service of the notice required by this chapter upon the
12 public entity shall constitute constructive service upon any
13 employee of that entity who is identified in the notice of claim.

14 (cf: P.L.1972, c.45, s.59:8-10)

15 5. This act shall take effect immediately.

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18 STATEMENT

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20 This bill would amend P.L.1972, c.45, the "Tort Claims Act" to
21 extend immunity from liability to public employees to the same
22 degree that public entities are immune from suit.

23 In Chapman v. Hall, 128 N.J. 394 (1992), the New Jersey
24 Supreme Court held that a public employee could be held liable
25 for dangerous conditions of public property. By contrast, a public
26 entity is liable for dangerous conditions on public property only if
27 the action or failure to act was palpably unreasonable.

28 The Supreme Court in Chapman also ruled that the notice
29 requirements of the Torts Claim Act are not applicable to public
30 employees. This bill would make those requirements applicable.

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35 Extends immunity to public employees in certain instances and
36 imposes 90 day notice requirement for suits against public
37 employees.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 226

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 21, 1994

The Assembly Judiciary, Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 226.

This bill would amend P.L.1972, c.45, the "Tort Claims Act," to extend immunity from liability to public employees to the same degree that public entities are immune from suit.

In Chatman v. Hall, 128 N.J. 394 (1992), the New Jersey Supreme Court held that a public employee could be held liable for dangerous conditions of public property. By contrast, a public entity is liable for dangerous conditions on public property only if the action or failure to act was palpably unreasonable.

The Supreme Court in Chatman also ruled that the notice requirements of the Torts Claim Act are not applicable to public employees. This bill would make those requirements applicable.

As originally introduced, section 1 of the bill had amended N.J.S.A. 59:3-1 to provide that "a public employee is not liable for an injury where the public entity which employs him is immune from liability for that injury." The committee eliminated the requirement that an employee will be immune only if his employer is immune, allowing immunity for a public employee in any case where any public entity is immune. As amended by the committee, this section now reads: "A public employee is not liable for an injury where a public entity is immune from liability for that injury."

The amendments also make changes in the requirements for filing a late notice of claim against a public entity. Under current law, a notice of claim must be made within 90 days of the accrual of the cause of action, unless the court grants permission to file a late claim. A late claim may, in the discretion of the court, be filed up to one year after the accrual of the cause of action.

The amendments provide that a claimant who applies to the court for permission to file a late claim must make a motion "supported by affidavits based upon personal knowledge of the affiant showing sufficient reasons constituting extraordinary circumstances" for the failure to timely file and, if applicable, for the failure to file the motion itself within a reasonable time following the 90-day period. Under current law, a motion to file a late claim need only be "based upon affidavits showing sufficient reasons" for the failure to timely file. Current law also contains no requirement to show reasons for a failure to file the motion within a reasonable time following the 90-day period.

In addition, the amendments provide that service of the notice upon the public entity shall constitute constructive service upon any employee of that entity.

This bill was prefiled for introduction in the 1994 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 226

STATE OF NEW JERSEY

DATED: MAY 5, 1994

The Senate Judiciary Committee reports favorably Assembly Bill No. 226 (1R).

In Chatman v. Hall, 28 N.J. 394 (1992), the New Jersey Supreme Court ruled that the section of the Tort Claims Act which provides that a public entity could be held liable for dangerous conditions on public property only if the action or failure to act was palpably unreasonable did not apply in actions brought against public employees. The Supreme Court in Chatman also ruled that the notice requirements of the Torts Claim Act are not applicable in actions brought against public employees.

This bill is intended to reverse the Chatman ruling and to amend the Torts Claims Act to extend to public employers the same degree of immunity that the TCA grants to public entities. The bill would also make any notice requirements under the Tort Claims Act applicable to both public entities and public employees.

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OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001
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Release: IMMEDIATE
JUNE 24, 1994

Gov. Christie Whitman yesterday signed legislation to permit municipalities to impose an additional assessment upon certain businesses to assist in tourism promotion.

The bill, S-277, was sponsored by Sen. Andrew Ciesla, R-Monmouth. The Assembly version, A-850, was sponsored by Assemblywoman Virginia Haines and Assemblyman David Wolfe, both R-Ocean.

Existing law permits municipalities to impose a \$50 assessment on licensed businesses and the bill signed yesterday increases the permissible limit to \$200. Licensed enterprises subject to the assessment include liquor distributors, amusement game operators, hotel and motel owners, theater owners and used car dealers.

The legislation requires that half of the funds raised by the additional assessment be used for tourism advertising in the region. Currently, five municipalities impose the assessment.

Other bills signed by the Governor yesterday include:

A-226, sponsored by Assemblymen Wayne Bryant, D-Camden, and Paul Kramer, R-Mercer, and S-337, sponsored by Sen. Donald DiFrancesco, R-Union, to extend immunity from liability to public employees.

A-519, sponsored by Assemblymen Gerald Zecker, R-Passaic, and John Gaffney, R-Atlantic, and Sen. Gerald Cardinale, R-Bergen, to allow insurance exchanges whose member syndicates include Subchapter S corporations to become surplus lines insurers in New Jersey.
